

NO. 84916-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Dependency of J.H., A Minor.

FROM THE COURT OF APPEALS, DIVISION III-No. 281272-III
SPOKANE COUNTY SUPERIOR COURT, JUVENILE DIVISION
No. 08-7026798

PETITIONER'S REPLY

PETITIONER/APPELLANT

GREGORY L. HYDE, # 777665
Airway Heights Corrections Center
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A. RESPONSE TO ISSUES PRESENTED IN RESPONDENT'S BRIEF

Concerning the response of The Department's answer as it relates to the petitioner's standing and whether this court should permit discretionary review. Beyond reaffirming the facts and legal arguments made in petitioner's initial motion, it is necessary to point out that The Department's contention is inconsistent with the central purpose of this state's dependency scheme (RCW 13.34 et.seq.) because it ignores the core fact that J.H. has a fundamental right to a safe, stable and drug free home. In re Dependency of R.H., 129 Wn.App. 83, 88, 117 P.3d 1179, (2005). The respondent cavalierly rejects any concern for the petitioner's interest in the wellbeing of his minor child. The Department, citing State v. Taylor,² claims:

"Mr. Hyde is not an aggrieved party because the dependency regarding J.H. has been dismissed and Mr. Hyde's parental rights remain intact."

Respondent's Answer at 7.

This presumption fails to take into consideration J.H.'s fundamental right to conditions consistent with his needs. RCW 13.34.020. The respondent can not seriously argue that the petitioner's fundamental interest as a parent does not include an interest in the health, safety, security and overall wellbeing of his minor child.

It is important to remember that the dependency in the present case was based on the no parent guardian section of

² 150 Wn.2d 599, 80 P.3d 605, (2003)

RCW 13.34.030(5)(c). The grounds for the dependency were specifically based on the mother's drug use and involvement with drugs, firearms and other criminal activities. Division III Motion for Discretionary Review Appendix A. These findings were based on the Agreed Order of Dependency entered December 17, 2008 (Division III Motion for Discretionary Review Appendix B) and provides ample support of the court's order on both dependency and disposition.

Dependency law compels the trial court to examine all circumstances that **could** affect the child's development and any dismissal must be based on the child's best interest. In re Dependency of R.H., 124 Wn.App. at 88; RCW 13.34.020.

The facts of this case make clear that the mother continues to engage in activities and maintain a life style that all parties previously agreed to be detrimental to the child. Division III Motion for Discretionary Review Appendix B. The mother's non-compliance with the urinalysis and non-compliance with the court ordered treatment(Division III, Motion for Discretionary Review Appendices E and F) perpetuates the uncertainty of the Court's and parties concern as to what role drugs played in the mother's life and her ability to parent and care for the child. Yet, on August 5, 2009 the court dismissed dependency without first resolving the issues and concerns that initiated the states response.

The Spokane County Superior Juvenile Court, acting pursuant to RCW 13.34 et. seq, ignored J.H.'s fundamental

rights, In re Dependency of R.H., supra, by prematurely dismissing dependency and establishing permanency with an unfit parent and placing J.H. in the very same circumstances that prompted the states initial involvement.

Accordingly, the dismissal order here is clearly inconsistent with intent and purpose of RCW 13.34 et seq. by ignoring the unambiguous language of the dependency scheme. As such is a obvious departure from the usual course of judicial proceeding that changes the status quo and limits the freedom of the petitioner to act. Dependency of D.A., 124 Wn.App 644, 659, 102 P.2d 847, (2004); In Re Welfare of A.J.R., 78 Wn.App. 222, 896 P.2d 1290, (1995); In re Walker, 43 Wn.2d 710, 715, 263 P.2d 956, (1983).

Dependency is a status that goes with the child and, In re Welfare of Fisher, 31 Wn.App. 550, 643 P.2d 887, (1982), the child's paramount interest and right to a safe, stable and drug free home must prevail. In re Dependency of J.B.S., 123 Wn.2d 1, 863 P.3d 1344, (1993).

The presumption forwarded by the Department that "most would view the dismissal of the dependency as an outcome favorable to Mr. Hyde" (Respondent's Answer at 7) assumes that the petitioner receives no benefit from the dependency. The fundamental right to parent is not a bare right. It must be understood to include an interest in the welfare of their minor child. Further, this position is improperly limited to the parent and is not appropriately balance against the childs interest.

Division III committed obvious and/or probable error by adopting such an unbalanced view that has changed the status quo of a party and substantially limits the freedom of the petitioner to act so as to call upon this court's revisory jurisdiction to review Division III's clear departure from the usual course of judicial proceeding, as set forth in RAP 13.5 (b)(1)-(3).

The Respondent reliance on the criminal case State v. Taylor, is misplaced. The dismissal order in Taylor did not involve the fundamental rights of a parent nor that of a minor child. Neither did the order concern itself with placement of a minor child stemming from a finding of dependency and certainly did not perpetuate circumstances previously determined to be detrimental to and inconsistent with the best interest and rights of a minor child. Taylor, is not analogous to the present case and is simply inapplicable under the facts of this case.

By contrast as petitioner explained in his motion:

"...the petitioner's capacity as a parent gives him a fundamental and private interest in the welfare of his minor child. The Petitioner is sufficiently aggrieved within the meaning of RAP 3.1 and has standing to challenge the Juvenile court order establishing permanency with an unfit parent who continues to maintain a lifestyle inconsistent with the child's right to conditions consistent with his needs."

Petitioner's Motion For Discretionary Review at 10.

Further, The Department is silent with respect to the petitioner's claim that the dismissal order is independently appealable as a matter of right. As argued, this court makes clear that the "disposition decision following a finding of dependency" is appealable as a matter of right. In re Chubb, 112 Wn.2d 719, 722, 773 P.2d 851, (1987). It is only a continued finding of dependency that is not appealable as a matter of right, Id., because it is not final and maintains the status quo wherein the supervision and review process continues.

As briefed, the petitioner contends that the dismissal order here is, in effect, a new disposition order concerning the placement of a minor child stemming from a finding of dependency and that it is a final order (CR 54(a)(1)-(2)) affecting substantial rights(i.e. the welfare of a minor child)and can be appealable as a matter of right under RAP 2.2(a). RAP 2.2(a)(1),(3),(5) and, (13).

The petitioner has presented many significant claims in support of his motion. Most of these legal claims are fact intensive. The Respondent has no real response to this logic except to protest that it does not agree with these claims, suggesting that " Mr. Hyde does not have a statutory right to appeal" (Respondent's Answer at 5) and any concern the petitioner has should "be addressed in the family Law Division of the Superior Court." Respondent's Answer at 7.

First, such an interpretation of RCW 13.34.090 as it relates to petitioner's right to appeal would burden the petitioner's fundamental right to access to the courts in violation of due process and equal protection.² It would reduce the right, if any, to an illusory right easily avoided by the trial court merely dismissing the dependency indifferent to the child's interest and the purpose of RCW 13.34 et. seq.

If this court were to accept such a construction would create a convenient way for juvenile courts to shield its judgments from all judicial rule and, in effect, suspend the right to appeal in these matters. Such a construction would clearly be unconstitutional.

This court's decision in In re Groove, 127 Wn.2d 221, 897 P.2d 1252, (1995) explicitly recognized that " whenever there is a statutory right to counsel at all stages of the proceeding" there is a right to appeal at public expense. Id., at 228-237.

The normal rule is that "if a case can be resolved on non-constitutional grounds, an appellate court should refrain from deciding the constitutional issues." Isla Verde International v. Cams, 146 Wn.2d 740, 752, 49 P.3d 867, (2002). In this case this court should avoid deciding whether RCW 13.34.090 is unconstitutional as applied by construing RCW 13.34.090 as to permit those indigent parents to attack a juvenile court order that places their minor child in hamrms way. This is

² Billock v. Superior Court, 84 Wn.2d 101, 524 P.2d 385, (1974).

easily done, all this court would need to do is reaffirm its holding in In re Groove, supra.

To adopt the respondent's contention that the petitioner does "not have a right to appeal" (Respondent's Answer at 5) on the basis that the trial court merely dismissed dependency would render RCW 13.34.090 unconstitutional and read In re Groove, out of law.

Second, the Family law forum is an inadequate review process providing no real avenues to protect the petitioner's interest in the welfare of minor child.

The petitioner is at a lost to comprehend the respondent's suggestion that:

" If Mr. Hyde Aspires to prove that J.H.'s mother is an unfit parent and seeks to remove J.H. from his mother's care, then his remedy lies with the Family Law Division of the Superior Court."

Respondent's Answer at 8.

The petitioner's difficulty in understanding respondent's reliance on this forum stems from respondent's failure to identify what, if any, remedy would be available to the petitioner in that court.

The family law forum is an arena for private disputes between parties to resolve their legal rights vis-a-vis eachother and their children, merely allocating parents responsibilty between parents. As the interest at stake in the Family Law court is not commensurated with the fundamental liberty interest at stake with dependency none of the servies

and opportunities to protect the welfare of the petitioner's child is available as it would be in dependency court. i.e. court ordered supervision, court ordered urinalysis, court ordered chemical dependency. Cf. Marriage of King, 162 Wn.2d 378, 174 P.3d 659, (2007); Southern Center Joint Venture v. Nat'l Democratic Party Comm., 113 Wn.2d 413, 422, 780 P.2d 1282, (1989).

The petitioner has maintained that the fact pattern of this case compels the conclusion that the mother is unfit and clearly unavailable as a parent. As The Department correctly acknowledges the fact the "Mr. Hyde was, and still is, incarcerated," Respondent's Answer at 2, what if anything can be achieved in the Family Law Court under these circumstances.

Equally perplexing, is trying to understand how a parenting plan under these facts could feasibly be entered allocating parental responsibilities between two equally unavailable parents.

Finally, the Court of Appeals violated the petitioner's due process rights for ineffective assistance of counsel on October 23, 2009 when the court entered an order consolidating and dismissing the matter without first giving counsel an opportunity to be heard in cases No. 28314-3-III, 28315-1-III and 28416-6-III. In re Welfare of J.M., 130 Wn.App. 912, 128 P.3d 245, (2005)

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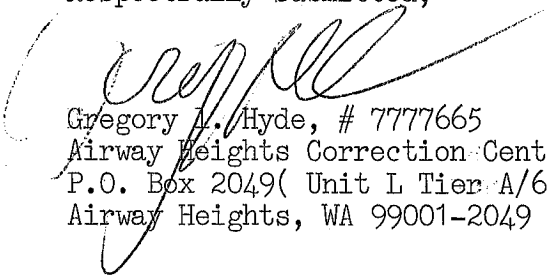
B. CONCLUSION

The petitioner submit that the facts and circumstances outlined in the initial motion and above section clearly demonstrate that the Court of Appeals, Division III, committed obvious and/or probable error that has changed the status quo of a party and substantially limits the freedom of the petitioner to act so as to call upon this court's revisory jurisdiction to review Division III's clear departure from the usual course or judicial proceedings, as set forth in RAP 13.5(b)(1)-(3).

The Petitioner respectfully request this court grant review of the decision of the Court of Appeals and vacate the order dismissing the appeals in this matter and reinstate the petitioner's appeal.

DATED this 24 day of September, 2010.

Respectfully Submitted,



Gregory L. Hyde, # 7777665
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SUPREME COURT OF
THE STATE OF WASHINGTON

In re dependency of,
JAYDEN HYDE
(5/20/2003)

No: 84916-1

DECLARATION OF SERVICE
BY MAILING

A minor)

I, Gregory L. Hyde, Petitioner, in the above entitled cause, do hereby declare that I have served the following documents;

Upon: Rebecca L. Prael
Office of Attorney General
116 W. Riverside Ave.
Spokane, WA 99201-1106

I deposited with the L-Unit Officer Station, by processing as Legal Mail, with first-class postage affixed thereto, at the Airway Heights Correction Center, P.O. Box 2049, Airway Heights, WA 99001-2049, as per General Rule 3.1

On this 24 day of September, 2010.

I certify under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Respectfully Submitted,

Gregory L. Hyde
GREG. L. HYDE #777665
Airway Heights Correction Center
P.O. Box 2049 (Unit L Tier A/621)
Airway Heights, WA 99001-2049

DECLARATION OF SERVICE BY MAILING

September 24, 2010

Susan L. Carlson, Clerk
Washington State Supreme Court
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Olympia, WA 98504-0929

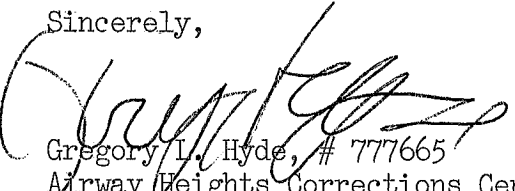
Re: In Re Dependency of J.H.,
No. 84916-1

Dear Ms. Susan L. Carlson:

Enclosed please find the original plus one copy of "Petitioner's Reply"
for filing in the above referenced case.

Thank you for your assistance in this matter.

Sincerely,



Gregory L. Hyde, # 777665
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P.O. Box 2049(Unit L Tier A/62)
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Enclosures

cc: Rebecca L. Prahl

CLERK

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